

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 17-20683

HON. DENISE PAGE HOOD

v.

KENNETH GARDNER,

Defendant.

ORDER REGARDING DEFENDANT'S LETTERS [ECF Nos. 121, 123]

The Court has received two handwritten letters directly from Defendant, one dated August 10, 2019 [ECF No. 121] and one dated October 21, 2019 [ECF No. 123]. Both letters address Defendant's concerns regarding his legal counsel's representation with respect to Defendant's appeal, including Defendant's concerns whether an appeal was filed and that his counsel was not communicating with him.

The Court notes that, on December 18, 2018, after a jury trial, Defendant was convicted of conspiracy to commit carjacking and numerous counts of carjacking, use of a firearm during and in relation to a crime of violence, and felon in possession of a firearm. On May 10, 2019, he was sentenced to 444 months in prison and Judgment was entered.

Although the case docket in the Eastern District of Michigan does not reflect

that an appeal was filed on behalf of Defendant, the General Docket for the Sixth Circuit Court of Appeals shows that a Notice of Appeal was filed on May 29, 2019, and that the appeal has been fully briefed (as of October 31, 2019). It is well-established law that, once a case is appealed to the Sixth Circuit Court of Appeals, this Court no longer has jurisdiction over the case and is unable take any action regarding the case. *See, e.g., United States v. Moss*, 189 F.R.D. 354 (E.D. Mich. 1999). In *Moss*, the court recognized that:

The “traditional rule is that a timely appeal divests the district court of jurisdiction to reconsider its judgment until the case is remanded by the Court of Appeals.” *LSJ Inv. Co., Inc. v. O.L.D., Inc.*, 167 F.3d 320, 324 (6th Cir.1999) (quoting *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir.1993)). . . . Therefore, petitioner’s filing of the notice of appeal on August 13, 1999, divested this Court of jurisdiction to entertain petitioner’s Rule 60(b) motion for relief from judgment.

Moss, 189 F.R.D. at 356.

For the reasons stated above, the Court concludes that it lacks authority to grant any relief sought by Defendant in his August 10, 2019 and October 12, 2019 letters. Accordingly,

IT IS ORDERED that Defendant’s requests for relief in the letters dated August 10, 2019 [ECF No. 121] and October 12, 2019 [ECF No. 123] are DENIED.

Dated: December 9, 2019

s/Denise Page Hood
DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE